Amoco Chemical Company *and* Oil, Chemical and Atomic Workers International Union Local No. 4-449, AFL–CIO and Amoco Corporation, Party-in-Interest

Amoco Corporation, Amoco Petroleum Additives Company and Amoco Oil Company, Single and/or Joint Employers *and* Oil, Chemical and Atomic Workers International Union and its Local 7-776, AFL–CIO

Amoco Oil Company, Yorktown Refinery *and* Oil, Chemical and Atomic Workers International Union and its Local 3-1

Amoco Oil Company, Texas City Refinery *and* Oil, Chemical and Atomic Workers International Union Local No. 4–449, AFL–CIO and Amoco Corporation, Party-in-Interest . Cases 16–CA–16278, 16–CA–16278–2 (Formerly Case 14–CA–22689), 16–CA–16278 (Formerly Case 5–CA–23894), and 16–CA–16279

August 18, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

On March 17, 1995, Administrative Law Judge Richard J. Linton issued the attached decision. The General Counsel and the Union each filed exceptions and supporting briefs. The Respondents filed exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent herewith.

The issue presented here is whether the Respondents, corporate subsidiaries of Amoco Corporation, violated Section 8(a)(5) of the Act by unilaterally implementing changes affecting the health and medical insurance benefits for collective-bargaining units of employees working at facilities in Texas City, Texas, Wood River, Illinois, and Yorktown, Virginia. These employees are represented by locals of the Oil, Chemical and Atomic Workers International Union (OCAW). The changes occurred without the Unions' consent during the term of collective-bargaining agreements covering each of these units.

The judge concluded that the Respondents acted lawfully in accord with reservation-of-rights language, set forth in summary plan documents describing the Amoco Medical Plan (AMP), that the judge found to be incorporated by reference into the parties' collective-bargaining agreements. As discussed below, we disagree with the judge's analysis, and we find that the Respondents violated Section 8(a)(5) by their unilateral conduct.

The AMP has covered most employees in Amoco companies, regardless of whether they have collective-bargaining representation, since April 1990. Until the October 1993 changes which provoked the current unfair labor practice litigation, the AMP was a traditional indemnity medical benefits plan with a health maintenance organization option. The summary plan description of the AMP's benefits and procedures includes a statement that

> the company reserves the right to amend or terminate these plans at any time and for any reason. If any of these plans are amended or terminated, you and other active employees may not receive benefits as described in other sections of this book. You may be entitled to receive different benefits, or benefits under different conditions. However, it is possible that you will lose all benefit coverage. This may happen at any time, even after you retire, if the company decides to Terminate a plan or your coverage under a plan. In no event will you become entitled to any vested rights under these plans.

Amoco and OCAW International traditionally negotiate national issues prior to the commencement of contract negotiations at the local level. The national negotiations result only in a "settlement offer" that is distributed to the local management and union officials for their separate contract negotiations. The resulting collective-bargaining agreements may contain more favorable terms than the national settlement, but not less.

The AMP summary plan description is not a collectively bargained document. The parties to national level negotiations have discussed health and medical insurance issues, but these discussions generally focused on allocation of premium costs between employer and employee. OCAW President Robert Wages estimated that he had never discussed 90 percent of the AMP, specifically including the reservation-of-rights language in the summary plan description. Wages said that he did not even become aware of this language until after the 1993 local contracts talks had concluded.[2]

[1] We deny the Respondent's motion to substitute certified documents and its motion to strike certain of the General Counsel's exceptions.

[2] The Respondents point to two rejected proposals from OCAW during the 1993 negotiations as evidence of its awareness of the existence and meaning of the reservation of rights language in the AMP summary plan description. One proposal stated, in an independent section, that

> there shall be no retrogression in previous terms and conditions, including but not limited to agreements on no layoffs, rate retention, plant closure, health and safety clauses, pension review, and health and safety review.

The other proposal was for inclusion within the section on medical/dental benefits of a statement that "There shall be no reduction of benefits during the term of the agreement." There is no evidence that

There is likewise no evidence that the local contract negotiations have ever involved discussion of the reservation-of-rights language. Although all local unions involved here undisputedly had copies of the AMP summary plan description, there is no direct evidence that local union officials at the Yorktown and Wood River facilities were specifically aware of this language. At the Texas City refinery, there is evidence only of a 1987 non-negotiating discussion between a management official, Tom Carlon, and a union official, James Edwards. Carlon testified that, during a review of a booklet describing a health benefit plan that preceded the AMP, Edwards asked what the reservation-of-rights language in the booklet meant. Carlon said that it meant what it said. Edwards responded that "we" would see some day. At the Texas City chemical plant, there is only Manager Jim Steinkamp's testimony that he referred to the reservation-of-rights provision when discussing with union officials certain changes that the Respondents made to the AMP in 1992.

In October 1992, Amoco and OCAW held a preliminary national negotiating meeting in advance of negotiations for the local 1993–1996 collective-bargaining agreements. At this meeting, Robert Bishop, Amoco's chief negotiator, said that the Respondents were considering changing the current medical benefits plan to a managed care system but that they would not have any details until after the regular contract negotiations. Wages said that it made sense to discuss changes after the Respondents had more information. The parties did not further discuss changes in the AMP in their national level negotiations. They focused, as in the past, on apportionment of premium costs between employer and employee. The final settlement offer for the first time incorporated OCAW's proposal for sharing premium costs on a percentage-basis, rather than the previous fixed-cost basis preferred by Amoco.

All parties followed the settlement with respect to the AMP in their ensuing local contract negotiations. Local negotiators for the Respondents provided some further information about changes under consideration for the AMP, but there were no attempts to negotiate. The local negotiations resulted in contracts effective from February 1, 1993, to January 31, 1996. Although the precise language varied, each of the five local contracts at issue here summarily referred to the provision of a medical expense benefit plan for covered unit employees. None of the contracts provides a specific description of the benefits provided or mentions Amoco's reservation of a right to amend or terminate the AMP. Only three of the contracts even refer to a plan booklet as a general source for description of benefits provided.

the parties mentioned the reservation of rights language in the course of discussing either of these proposals.

Subsequent to the effective date of the new collective-bargaining agreements, the Respondents announced several significant changes in the AMP: (1) conversion to a managed care system; (2) an increase from 65 to 80 in the number of points (age plus years of service) that a current employee would have to have in order to obtain full company support for medical insurance in retirement; and (3) a separation of retirees into a separate pool for claims experience, with the result that current employees would face substantially higher premium costs in retirement. The Respondents gave information about these changes and discussed them with OCAW and the local unions. All of the Unions opposed the changes. The Respondents implemented the changes without the Unions' consent on October 1, 1993.

It is well established that the health insurance and medical benefit plans of active bargaining unit employees are a mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736, 746 (1962); *Coastal Derby Refining Co.*, 312 NLRB 495, 497 (1993).[3] Furthermore, Section 8(d) of the Act provides that no party to a collective-bargaining agreement shall be required "to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract." An employer therefore violates Section 8(a)(5) by making a midterm contract modification on a mandatory bargaining subject without the representative union's consent. *Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. at 159.

It is undisputed that the Unions here did not give contemporaneous consent to modification of the AMP during the term of the 1993–1996 collective-bargaining agreements covering four separate employee bargaining units. The Respondents' defense of their unilateral action rests on the claim that no such consent was required because the Unions had previously waived the right to bargain about the terms of the AMP. The Respondents rely on the reservation-of-rights language in the AMP's summary plan description as proof of waiver.

Waivers of statutory rights are not to be "lightly inferred." *Georgia Power Co.*, 325 NLRB 420 (1998), enfd. mem. 176 F.3d 494 (11th Cir. 1999). They must be "clear and unmistakable." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).[4] "[E]ither the contract language relied on must be specific or the employer must show that the issue was fully discussed and consciously explored and that the union consciously yielded

[3] This includes the future retirement benefits of current active employees. *Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 180 (1971); *Midwest Power Systems, Inc.*, 323 NLRB 404 (1997), remanded on other grounds (mem.) *Midwest Power Systems, Inc. v. NLRB*, No. 97–1251 (D.C. Cir. 1998).

[4] See also *Trojan Yacht*, 319 NLRB 741, 742 (1995).

or clearly and unmistakably waived its interest in the matter." *Georgia Power*, supra at 420–421.

As in *Georgia Power*, we find that the reservation-of-rights language relied on by the Respondents does not meet the standard for a clear and unmistakable waiver of the Unions' right to bargain about the AMP. The local contracts do not specifically incorporate the AMP documents let alone the reservation-of-rights language from the AMP summary plan description. Indeed, only three of the five local contracts even mention the summary plan as a source for general description of the AMP's benefits.[5] Furthermore, there is no evidence that the parties have ever bargained about the reservation-of-rights language at the local or national level.[6] There is scant evidence that union officials were even aware of this language.

Obviously, the AMP summary plan description is a primary reference for identifying the medical insurance benefits that the Respondent has contractually agreed to provide unit employees. The record here will not, however, support finding that the entirety of this nonnegotiated corporate document was part of the parties' collective-bargaining agreement and so establishes the Unions' waiver of their statutory right to so bargain about the AMP benefits and, during the term of a contract, to insist on the Respondents' maintenance of current benefits unless the Unions consent to change them. Under the circumstances, we conclude that the Respondents' implementation of changes in the AMP benefits of active employees without the Unions' consent violated Section 8(a)(5) of the Act.

[5] This case is therefore distinguishable from *Mary Thompson Hospital*, 296 NLRB 1245 (1989), where the judge found that a provision of the collective-bargaining agreement specifically incorporated the entire benefit plan, including reservation of rights language, into the contract.

[6] In this regard, we find no merit in the Respondents' argument that OCAW's proposal of the "no retrogression" and "no reduction of benefits" language during the 1993 settlement offer negotiations constituted bargaining about the reservation of rights language. There is no evidence that OCAW made its proposals to counter the language in the summary plan description. As previously stated, it is undisputed that the parties did not discuss this language during their negotiations.

We further find that the anecdotal evidence about two local management-union officials' conversations about the reservation of rights language falls far short of proving that the Unions have fully discussed and consciously explored the issue of waiving their right to bargain about changes in the AMP. Neither of those conversations, one of which occurred in 1987, even involved collective-bargaining negotiations.

Finally, we reject the Respondents' argument that the Unions' failure to object to prior changes in the AMP proves that they have waived their interest in this matter. It is well established that "union acquiescence in past changes to a bargainable subject does not betoken a surrender of the right to bargain the next time the employer might wish to make yet further changes, not even when such further changes arguably are similar to those in which the union may have acquiesced in the past." *Exxon Research & Engineering Co.*, 317 NLRB 675, 685–686 (1995). Accord: *NLRB v. Miller Brewing Co.*, 408 F.2d 12, 15 (9th Cir. 1969). In this case, the 1993 changes to the APM were far more substantial in their scope and impact on unit employees than any past change cited by the Respondents.

CONCLUSIONS OF LAW

1. The Respondents, Amoco Chemical Company, Amoco Oil Company, Yorktown Refinery, Amoco Oil Company, Texas City Refinery, and Amoco Corporation, Amoco Petroleum Additives Company, and Amoco Oil Company, single and/or joint employers, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Oil, Chemical and Atomic Workers International Union and affiliated Locals No. 4–449, 7–776, and 3–1, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. The following units are appropriate for purposes of collective bargaining:

Case 16–CA–16278

All production and maintenance employees of Amoco Chemical Company at the Texas City, Texas plant excluding clerical, office, guards and all supervisory employees as defined in the Act.

Case 16–CA–16278–2

(1) All operating and maintenance employees of Amoco Petroleum Additives Company employed at the Wood River, Illinois facility, excluding all supervisors, professional employees, guards and watchmen as defined in the Act, and all clerical employees.

(2) All operating employees of the Amoco Oil Companies Marketing Department Wood River, Illinois, at the Distribution Terminal, excluding all supervisors, professional employees, and guards and watchmen, as defined in the Act, and all clerical employees.

Case 16–CA–16278–3

The Company's production and maintenance employees and laboratory personnel employed at its refinery in Yorktown, Virginia, excluding all office and clerical employees, guards, watchmen, professional employees, and employees engaged in research and engineering, and all supervisory employees, as defined in the Act.

Case 16–CA–16729

All employees of Amoco Oil Company engaged in the operation and maintenance of the Texas City, Texas, refinery, excluding clerical, office, technical or research, plant protection and supervisory employees.

4. At all times material, OCAW Local No. 4-449, AFL–CIO has been the exclusive collective-bargaining representative of the employees in the Texas City, Texas, units described above. OCAW Local 7–776, AFL–CIO has been the exclusive collective-bargaining representative of the employees in the Wood River, Illi-

nois units described above. OCAW International and its Local 3–1 have been the exclusive collective-bargaining representative of the employees in the Yorktown, Virginia unit described above.

5. The Respondents have violated Section 8(a)(5) and (1) of the Act by failing to continue in effect all the terms and conditions of 1993–1996 collective-bargaining agreements with the Unions by modifying the Amoco Medical Plan without obtaining the Unions' consent.

6. The unfair labor practices found above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondents to restore the health and medical insurance coverage benefits that were provided to employees in the four bargaining units involved in this case before the Amoco Medical Plan was unilaterally modified. In addition, the Respondents shall reimburse unit employees for any expenses resulting from the unilateral changes, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

A. The National Labor Relations Board orders that the Respondent, Amoco Chemical Company, Texas City, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union Local No. 4-449, AFL–CIO, by modifying the Amoco Medical Plan during the term of a collective-bargaining agreement with the Union and without obtaining its consent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the health and medical insurance benefits that were provided to unit employees before the Amoco Medical Plan was changed on October 1, 1993, and make unit employees whole for any losses that they may have suffered as a result of the unilateral changes.

(b) Bargain in good faith with the Union concerning any changes in health and medical insurance benefits for employees in the following appropriate unit:

> All production and maintenance employees of Amoco Chemical Company at the Texas City, Texas plant excluding clerical, office, guards and all supervisory employees as defined in the Act.

(c) Within 14 days after service by the Region, post at its facility in Texas City, Texas, copies of the attached notice marked "Appendix A."[7] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 1993.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondents, Amoco Corporation, Amoco Petroleum Additives Company, and Amoco Oil Company, single and/or joint employers, Wood River, Illinois, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union Local No. 7–776, AFL–CIO, by modifying the Amoco Medical Plan during the term of a collective-bargaining agreement with the Union and without obtaining its consent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the health and medical insurance benefits that were provided to unit employees before the Amoco Medical Plan was changed on October 1, 1993, and make unit employees whole for any losses that they may have suffered as a result of the unilateral changes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Bargain in good faith with the Union concerning any changes in health and medical insurance benefits for employees in the following appropriate units:

(1) All operating and maintenance employees of Amoco Petroleum Additives Company employed at the Wood River, Illinois facility, excluding all supervisors, professional employees, guards and watchmen as defined in the Act, and all clerical employees.

(2) All operating employees of the Amoco Oil Companies Marketing Department Wood River, Illinois, at the Distribution Terminal, excluding all supervisors, professional employees, and guards and watchmen, as defined in the Act, and all clerical employees.

(c) Within 14 days after service by the Region, post at their facility in Wood River, Illinois, copies of the attached notice marked "Appendix B."[8] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since October 1, 1993.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

C. The National Labor Relations Board orders that the Respondent, Amoco Oil Company, Yorktown Refinery, Yorktown, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union Local No. 3-1, AFL–CIO, by modifying the Amoco Medical Plan during the term of a collective-bargaining agreement with the Union and without obtaining its consent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the health and medical insurance benefits that were provided to unit employees before the Amoco Medical Plan was changed on October 1, 1993, and make unit employees whole for any losses that they may have suffered as a result of the unilateral changes.

(b) Bargain in good faith with the Union concerning any changes in health and medical insurance benefits for employees in the following appropriate unit:

The Company's production and maintenance employees and laboratory personnel employed at its refinery in Yorktown, Virginia, excluding all office and clerical employees, guards, watchmen, professional employees, and employees engaged in research and engineering, and all supervisory employees, as defined in the Act.

(c) Within 14 days after service by the Region, post at its facility in Yorktown, Virginia, copies of the attached notice marked "Appendix C."[9] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 1993.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

D. The National Labor Relations Board orders that the Respondent, Amoco Oil Company, Texas City Refinery, Texas City, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Oil, Chemical and Atomic Workers International Union Local No. 4-449, AFL–CIO, by modifying the Amoco Medical Plan during the term of a collective-bargaining agreement with the Union and without obtaining its consent.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the health and medical insurance benefits that were provided to unit employees before the Amoco Medical Plan was changed on October 1, 1993, and make unit employees whole for any losses that they may have suffered as a result of the unilateral changes.

(b) Bargain in good faith with the Union concerning any changes in health and medical insurance benefits for employees in the following appropriate unit:

> All employees of Amoco Oil Company, Texas City Refinery, engaged in the operation and maintenance of the Texas City, Texas, refinery, excluding clerical, office, technical or research, plant protection and supervisory employees.

(c) Within 14 days after service by the Region, post at its facility in Texas City, Texas, copies of the attached notice marked "Appendix D."[10] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 1993.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 16 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Oil, Chemical and Atomic Workers International Union Local No. 4-449, AFL–CIO, by changing health and medical insurance benefits during the term of a collective-bargaining agreement with that Union and without its consent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the health and medical coverage benefits that were provided to unit employees before we changed the Amoco Medical Plan on October 1, 1993.

WE WILL make whole any bargaining unit employee who may have suffered any loss as a result of our unilateral change in health plans.

WE WILL bargain in good faith with the Union concerning any changes in health and medical insurance benefits for employees in the following appropriate unit:

> All production and maintenance employees of Amoco Chemical Company at the Texas City, Texas plant excluding clerical, office, guards and all supervisory employees as defined in the Act.

AMOCO CHEMICAL COMPANY

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Oil, Chemical, and Atomic Workers International Union Local 7-776, AFL–CIO, by changing health and medical insurance benefits during the term of a collective-bargaining agreement with that Union and without its consent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the health and medical coverage benefits that were provided to unit employees before we changed the Amoco Medical Plan on October 1, 1993.

WE WILL make whole any bargaining unit employee who may have suffered any loss as a result of our unilateral change in health plans.

WE WILL bargain in good faith with the Union concerning any changes in health and medical insurance benefits for employees in the following appropriate units:

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(1) All operating and maintenance employees of Amoco Petroleum Additives Company employed at the Wood River, Illinois facility, excluding all supervisors, professional employees, guards and watchmen as defined in the Act, and all clerical employees.

(2) All operating employees of the Amoco Oil Companies Marketing Department Wood River, Illinois, at the Distribution Terminal, excluding all supervisors, professional employees, and guards and watchmen, as defined in the Act, and all clerical employees.

AMOCO CORPORATION, AMOCO PETROLEUM ADDITIVES COMPANY, AMOCO OIL COMPANY

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Oil, Chemical and Atomic Workers International Union Local No. 3-1, AFL–CIO, by changing health and medical insurance benefits during the term of a collective-bargaining agreement with that Union and without its consent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the health and medical coverage benefits that were provided to unit employees before we changed the Amoco Medical Plan on October 1, 1993.

WE WILL make whole any bargaining unit employee who may have suffered any loss as a result of our unilateral change in health plans.

WE WILL bargain in good faith with the Union concerning any changes in health and medical insurance benefits for employees in the following appropriate unit:

All production and maintenance employees and laboratory personnel employed at our refinery in Yorktown, Virginia, excluding all office and clerical employees, guards, watchmen, professional employees, and employees engaged in research and engineering, and all supervisory employees, as defined in the Act.

AMOCO OIL COMPANY, YORKTOWN REFINERY

APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Oil, Chemical and Atomic Workers International Union Local No. 4-449, AFL–CIO, by changing health and medical insurance benefits during the term of a collective-bargaining agreement with that Union and without its consent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the health and medical coverage benefits that were provided to unit employees before we changed the Amoco Medical Plan on October 1, 1993.

WE WILL make whole any bargaining unit employee who may have suffered any loss as a result of our unilateral change in health plans.

WE WILL bargain in good faith with the Union concerning any changes in health and medical insurance benefits for employees in the following appropriate unit:

All employees of Amoco Oil Company, Texas City Refinery, engaged in the operation and maintenance of the Texas City, Texas, refinery, excluding clerical, office, technical or research, plant protection and supervisory employees.

AMOCO OIL COMPANY, TEXAS CITY REFINERY

Robert G. Levy II, Esq. for the General Counsel.
Jeffrey S. Heller, Esq. (Amoco Corp.), of Houston, Texas, for the Respondents.
Patrick M. Flynn, Esq., of Houston, Texas, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

RICHARD J. LINTON, Administrative Law Judge. This is a unilateral change case. The Government contends that Amoco violated Section 8(a)(5) of the Act by making a unilateral midterm modification of the 1993–1996 collective-bargaining agreement when, on October 1, 1993, it implemented, over the Union's objection, a new version of its Amoco Medical Plan (AMP). Amoco argues that no unlawful midterm modification occurred because (among other contentions) the collective-bargaining agreement incorporates the AMP and the AMP contains a reservation-of-rights clause which authorized the modification. Agreeing that if the reservation-of-rights clause applies there is no violation, the General Counsel counters that the reservation-of-rights clause does not apply because there is no language in the collective-bargaining agreement which incorporates the AMP. The violation occurs, the General Counsel argues, because the collective-bargaining agreement provides for benefits specified in the pre-October 1 AMP. Finding that the collective-bargaining agreement adopts the AMP, I find no violation, and I dismiss the complaint.

I presided at this 4-day trial in Houston, Texas, on October 12–14 and November 21, 1994, pursuant to the September 19, 1994 order consolidating cases issued by the Regional Director

for Region 16 of the National Labor Relations Board.[1] The Regional Director's order consolidated four complaints. Although the Respondents are separate entities, they all are related to the corporate parent, Amoco Corporation. Because of that relationship, I shall refer to the Respondents collectively as Amoco, or Respondent, unless the situation calls for the name of the specific company.

Two of the complaints (the first and fourth cases, 16–CA–16278 and 16–CA–16279) involve Houston area (Texas City) facilities of Amoco; one complaint (the second case, 16–CA–16278–2) a facility in the St. Louis area (Wood River, Illinois), and a third complaint the facility at Yorktown, Virginia (the third case, 16–CA–16278–3). The complaint in the first case, 16–CA–16278, was issued May 6, 1994, by the General Counsel of the National Labor Relations Board through the Acting Regional Director for Region 16 of the Board. The complaint is based on a charge filed September 8, 1993, by Oil, Chemical & Atomic Workers International Union, Local No. 4–449, AFL–CIO, against Amoco Chemical Company (ACC). Charges and complaints followed in the other cases. Although the trial pleadings involve the original complaints in three of the cases, in the Yorktown case an amended complaint issued on August 12, 1994, by the General Counsel through the Regional Director of NLRB Region 5. As reflected by the September 19, 1994 order consolidating the four cases for trial, on September 9, 1994, the General Counsel transferred the Wood River (NLRB Region 14) and Yorktown (NLRB Region 5) cases to NLRB Region 16 (Fort Worth).

Different Locals of the Oil, Chemical & Atomic Workers International Union (OCAW) are involved. As mentioned, Local 4–449 filed the charge in the first case. Local 7–776 filed the Wood River charge, Local 3–1 filed the Yorktown charge, and Local 4–449 filed the charge in the fourth case (the second Houston case). Except where necessary to identify the individual Local, or to refer to the International specifically, I shall use the term "Union" for all the union entities either collectively, individually, or as a Local in conjunction with the International. When necessary to refer specifically to the parent union, I shall identify it as the OCAW or the International.

The complaints allege an unfair labor practice common to all cases. They allege that on October 1, 1993, Amoco implemented changes in the Amoco Medical Plan (AMP) without having reached agreement with the Union concerning the changes. As each complaint alleges that, by such unilateral conduct, Amoco violated Section 8(a)(5) of the Act, I shall refer to all complaints collectively as the complaint. By its answers (answer), Amoco admits certain facts, raises certain matters as affirmative defenses, and denies violating the Act.

Initially the parties contemplated trials at Houston, Saint Louis/Wood River, and Yorktown. After the Houston segment adjourned on October 15, 1994, the parties agreed on separate fact stipulations covering Wood River (G.C. Exh. 33) and Yorktown (G.C. Exh. 34).[2] These stipulations were received in evidence on the fourth day (November 21, 1994) at Houston along with certain other exhibits. The parties also stipulated that the general testimony of three witnesses applies to all locations. (4:915–920.) The three witnesses are Robert Bishop (Amoco's manager of employee and industrial relations at the corporate level), Gail Cooper (human resource consultant at the corporate office), and Robert Wages (OCAW's national president). Bishop and Wages negotiate at the national level on national issues. However, there is no national contract. The agreement, or "settlement,'' as to national issues is distributed to the local units of Amoco and of the Union, and it is at the local level that separate collective-bargaining agreements are negotiated with Locals of the Union. From the Union's standpoint, a Local may negotiate for something more favorable than is contained in the national settlement, but a Local may not agree to less.

At the heart of this case is Amoco's medical plan, the AMP. Most of the description of the AMP comes from Cooper, the corporate human resource consultant. Cooper is a member of Amoco's welfare benefits staff. She is principally responsible for managing Amoco's medical plans and HMOs. She works in the area of corporate policy respecting such matters, in the design of the plans, their application, and in the hiring and management of the vendors that administer the plans on behalf of Amoco. She has been in her position for about 6 years.

The General Counsel and Amoco have filed briefs. (Although dated for the due date of January 10, 1995, with a certificate of service giving that date [which would have been tardy under the rules if mailed that date], Amoco's brief actually was sent by overnight service on January 9, and was filed in Atlanta on January 10, 1995.) The Union submitted a letter in which it advised that, relying on the General Counsel's brief, it would not file a separate brief. For a requested remedy, the General Counsel lists certain matters and cites the remedial order in "cases such as" *Keystone Steel & Wire*, 248 NLRB 283, 283–284 (1980). Attached to Amoco's brief are documents from eight other cases plus a photocopy of a decision by the Seventh Circuit Court in an ERISA case *Young v. Standard Oil (Indiana)*, 849 F.2d 1039 (7th Cir. 1988). Of the items from the eight other cases, only one was discussed at the trial—an October 20, 1994 19-page opinion and award by Arbitrator Thomas F. Levak (involving Amoco's Salt Lake City refinery and OCAW Local 2-286). Shortly before I closed the hearing, Amoco's attorney raised the matter of Arbitrator Levak's opinion and award, and stated that he had informed counsel of his intention to attach it to his brief as supplemental authority. Amoco's attorney viewed the issue as simply the citation of authority rather than as an evidentiary matter calling for a copy to be introduced as an exhibit. A lengthy colloquy ensued in which I expressed concern with any procedure which did not involve authentication. Eventually the parties stipulated to authenticity of the arbitrator's decision, with arguments to relevance and weight being reserved for the briefs. (4:920–931.)

Among the other attachments are unfair labor practice charges filed in 1992 and 1993 (regarding facilities at Mandan, North Dakota, and Whiting, Indiana) and lawsuits filed in Chicago, Galveston, and Indiana. Although there are brief references in the record to unfair labor practice charges and to a lawsuit filed elsewhere, no documents concerning such were identified or offered as exhibits, and Amoco's counsel said nothing about attaching copies of them to Amoco's brief. Thus, the General Counsel and the Union now have no opportunity to offer evidence which would rebut, show the proper context by testimony and documents, to show lack of relevance, or even to show that a series of documents is incomplete. (Amoco asserts,

[1] Unless otherwise indicated, as here, all dates are for 1993.

[2] Exhibits are designated G.C. Exh. for the General Counsel's, R. Exh. for those of Respondent, and J. Exh. for the Joint Exhibits. The Charging Parties did not offer any exhibits. References to the four-volume transcript are by volume and page.

Br. at 11–12, that a letter from OCAW Local 6–10, showing no appeal from a dismissal of one of the charges, is attached. However, no such letter is attached.)

Items of evidence are to be offered in public view at trial, not backdoored by attachment to a party's brief. Decisions of courts of record are not treated as items of evidence, but are cited as authority or for the relevance of their reasoning. They need no authentication other than their status as officially reported decisions located in the national reporter system. Any decision not so reported would need to be authenticated, and that certainly includes a decision of an arbitrator which is not reported in a commercial reporter system for decisions of arbitrators. Copies of purported unfair labor practice charges, not bearing a certification by the NLRB office involved or by the Board's Executive Secretary, are not self-authenticating. The same is true of purported dismissal letters or similar documents. Official notice may be taken of such documents when their genuineness is demonstrated, but their naked attachment to a party's brief provides nothing in the way of assurance of their authenticity.

By its two-page letter of January 10, 1995, the Union observes that additional evidence would be needed to place some of the attachments in context, that the lawsuits involve either different allegations or, as with the reported ERISA case, are inapposite, and that Judge James L. Rose's January 13, 1993 decision in the case of *Trojan Yacht* is not relevant because of certain contract language. [Amoco's counsel improperly failed to supply the status of *Trojan Yacht* on whether appealed to the Board, and, if not, a certified copy of the Board's order adopting.]

Attaching a copy of the Union's two-page letter to his own January 12, 1995 motion to strike, the General Counsel argues that the attachments are not relevant and (other than the decision of Arbitrator Levak) are prejudicial, given the General Counsel's lack of opportunity to adduce evidence in response, and should be stricken or disregarded. The General Counsel represents that the January 13, 1993 decision of Administrative Law Judge Rose in *Trojan Yacht* is pending before the Board on exceptions. (As the copy of *Trojan Yacht* reflects that it issued by Lexis-Nexis of Mead Data Central, a national commercial legal publisher, I treat the copy as a reported decision.) Amoco has filed a motion, dated February 3, 1995, for leave to file an accompanying 13-page reply brief and response to the General Counsel's motion to strike. (Combined with the reply brief is Amoco's response to the General Counsel's motion to strike.) I consider Amoco's response to the General Counsel's motion to strike along with the General Counsel's motion to strike and separate from Amoco's reply brief. [Amoco's response to the General Counsel's motion to strike should have been filed as a separate document, for the motion for leave to file the reply brief could have been denied.]

Granting the General Counsel's motion in major part, I strike all the attachments to Amoco's brief with the exception of Arbitrator Levak's decision, the copy of *Young v. Standard Oil (Indiana)*, and Judge Rose's decision in *Trojan Yacht*. The parties agreed that the Levak decision could be attached, *Young* is a copy of a reported decision of a Federal circuit court, and the General Counsel's representation reflects that *Trojan Yacht* is pending before the Board. Respecting Amoco's motion for leave to file a reply brief, I am guided by the considerations expressed at *Fruehauf Corp*., 274 NLRB 403 fn. 2 (1985). Thus, as acceptance is within an administrative law judge's discretion, reply briefs must be accompanied by motion for leave to file, the briefs should be short, succinct, not repetitive of facts or arguments stated in the principal brief, and consideration of the reply brief should not serve to delay the judge's decision. I should add that a reply brief should be helpful, for if it is not of that quality, the motion for leave to file is likely to be denied. By one-page letter dated February 8, 1995, the General Counsel opposes Amoco's motion for leave to file a reply brief (but not the portion responding to the General Counsel's motion to strike). The General Counsel argues that a reply brief is neither necessary nor meaningful because Amoco's main brief, even before all the attachments, is 78 pages. The General Counsel's argument is misplaced. Amoco's primary brief addresses the record. The purpose of a reply brief is, or should be, to point out asserted distortions of fact or law in the opponent's primary brief. Granting Amoco's motion for leave to file, I have considered its reply brief.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs (including Amoco's reply brief) filed by the General Counsel and by Amoco, I make the following

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. Amoco and the Facilities Involved[3]

Amoco Corporation is an Indiana corporation with its corporate office and principal place of business in Chicago, Illinois. Amoco is engaged in the oil and petrochemical business (exploration, production, refining, marketing, and transportation as to oil), and in related businesses. Amoco conducts its business through subsidiaries. Among Amoco's subsidiaries are (either directly or indirectly) the operating companies here. Thus, Amoco Chemical Company (ACC, the first Houston case) is a wholly owned subsidiary of Amoco Chemical Holding Co. which in turn is wholly owned by Amoco. Amoco Petroleum Additives Company (APAC) and Amoco Oil Company (AOC), the companies involved in the Wood River case, are subsidiaries of Respondent Amoco.

Five of Amoco's facilities are involved in this consolidated case. At Houston ACC (the company in the first case) manufactures and sells chemicals and plastics at its Texas City chemical plant. Since 1989 James E. Steinkamp has been human resources manager there and has been responsible for all contract negotiations with Local 4-449.

AOC (the Company in the fourth case) operates the oil refinery at Texas City. Amoco's attorney represents that Amoco is the fifth largest independent petroleum company in the United States, and that its Texas City refinery is the second largest refinery in the country. (1:26–27.) Nearly 10,000 of Amoco's employees are in the Gulf Coast area near Houston, and this number includes the two Texas City facilities. (2:556, Cooper.) Paul L. Clark, human resources manager of Amoco's Texas City refinery (1:162), testified that as of approximately July 1, 1993, the Texas City refinery employed 1402 employees who were represented by Local 4-449. (3:723; R. Exh. 18 at 7.) Bishop testified that, nationwide, Amoco employs about

[3] The pleadings establish, and I find, that the Board has both statutory and discretionary jurisdiction and that the Union is a statutory labor organization.

15,000 production employees, with some 5000 to 6000 being represented by OCAW Locals or other unions. (1:88–89.)

At Wood River, two facilities are involved. One is the Amoco Oil Co. (AOC) terminal. At that AOC terminal, Bishop testified, Local 7-776 represents about 25 employees. (3:656.) Part of the property there is an old refinery, and in 1982, a portion of the old refinery was reopened in 1982 as Amoco Petroleum Additives Company (APAC). (G.C. Exh. 33 at 2.) Local 7-776 represents about 100 employees of the APAC plant at Wood River. (3:655, Bishop.) The two represented groups have separate collective-bargaining agreements.

The Yorktown facility is an AOC refinery, a small refinery in comparison with that at Texas City, and Local 3-1 represents about 200 employees there. (3:655, Bishop.)

B. Principal Facts

In October 1992, Amoco (Bishop, the spokesperson) and the OCAW (Wages, the spokesperson) began discussions regarding national issues that would be referred as the "settlement offer" to the local level for contract negotiations. During the October 1992 discussion at the national level, Bishop advised Wages that Amoco was considering changing the AMP [at that time a traditional plan with deductibles and specified benefit levels] to a managed care system. As Bishop had no details, Wages suggested that they talk about it when Amoco had more information. They passed to other matters. (1:47, 49, 96–96; 2:286–287, Wages.)

Eventually the parties signed successor contracts for 1993–1996, effective February 1, 1993. Aside from the brief reference in October 1992, the parties never discussed the managed care system during contract negotiations, and the 1993–1996 contracts have no language expressly providing for a change to managed health care. However, the collective-bargaining agreements refer to the AMP, and the AMP contains language which is at the core of the dispute here. That language in the AMP is described as a "reservation of rights" clause. According to Wages, it was not until he was told by one or more of the Locals, after the February 1 contract settlement, that the AMP contained a "reservation of rights" clause. (2:451, 477, 479.) Cooper testified that the decision, by senior management, to change to managed care was made during the summer of 1992. (1:124; 2:527–528.) The Locals demanded to bargain, and bargaining took place thereafter. The Union argued that the AMP, as it then existed, should remain the AMP. Rejecting the Union's position, and asking if the Union had any alternative plan to submit for consideration (the Union did not), Amoco adhered to its decision to implement the new program effective October 1. It was implemented that date.

As implied by its name, the AMP is Amoco's national medical plan. Bishop testified that the plan covers about 30,000 employees. When dependents are counted, the number of persons covered is nearly 60,000. (3:655.) Amoco has about 15,000 production workers in the United States, and the AMP apparently covers nearly all Amoco's other employees in the country, including management. The Union never offered an alternative plan because, Wages testified, benefits are better and less expensive when the covered group is larger. (2:447.)

A June 1993 update (G.C. Exh. 24) to book 2 (G.C. Exh. 20) basically describes the AMP beginning October 1, 1993 (2:553, 565, 620), although the complete AMP consists of Book 2, all updates, and the "red stripers." (1:113; 2:508, 565–566.) The managed care plan, a major change, includes characteristics which are significantly less favorable to employees than was the AMP before the changes of October 1. Additionally, the new AMP will become more expensive for 5 percent of those employees who, after October 1, become eligible to retire. (R. Exh. 18 at 7; 1:136, 151; 2:569, 614–618, 629–630, Cooper; 3:769, Clark.) Finally, the new AMP places retirees into their own experience group. (1:185, Clark; G.C. Exh. 33, par. 7.)

The 1993–1996 contracts refer to the AMP. Although they do not explicitly incorporate the AMP, they appear to adopt the AMP and several other benefit plans. Thus, in the memorandum of agreement (MOA) covering the bargaining unit at the Texas City refinery, the parties agree "that the following Employee Benefit Plans are generally set forth in the current Benefits Plan Booklets. However, it is understood that certain provisions in the Booklet have been superseded by negotiation between the parties." (G.C. Exh. 8 at 3.) There follows a listing of eight named plans for matters such as savings, group life insurance, retirement, and dental. Among those listed is the Comprehensive Medical Expense Plan (CMEP), the predecessor plan to the AMP.

The next paragraph provides (G.C. Exh. 8 at 3):

> The following benefit plan changes were negotiated for the contract period beginning February 1, 1993:
>
> Amoco Medical Plan:
>
> Effective April 1, 1993 and for the term of this agreement, the Company's contribution towards the Amoco Medical Plan will be based on an Employer contribution of 80 percent of cost and an employee contribution of 20 percent of cost. The Company's contribution towards the cost of coverage under approved HMO's [HMOs] will be based on an 80 percent contribution, but in no case to exceed the dollar amount paid toward the cost of coverage under the Amoco Medical Plan as described above, with participating employees paying the balance of the cost.

Two pages later, Amoco and Local 4-449 agree that "no dispute, grievance or question arising in connection with the various Benefit Plans or this Memorandum of Agreement shall be subject to Arbitration." (G.C. Exh. 8 at 5.) [The MOA is a series of separately executed memorandums covering some 18 topics, mostly work related, but with some economic items. Other items are covered in the basic contract, G.C. Exh. 6.]

The collective-bargaining agreement between ACC and Local 4-449 contains similar provisions for the chemical plant's bargaining unit. (G.C. Exh. 9 at 50–51.)

Effective April 1, 1990, the AMP replaced (or "modified", per Cooper, 2:505, 560, 604, 621–623) the CMEP, and the AMP consisted of book 2, or General Counsel Exhibit 20. (2:494, 495, 498, 501, 505). [Actually, book 2 apparently was issued sometime later in 1990 after April 1. 1:110, Cooper. I shall refer to the time as mid-1990.] As of February 1, 1993, when the new collective-bargaining agreements became effective, the AMP consisted of General Counsel. Exhibit 20 plus two modifications, "red stripers" (so-called because amending documents are identified by a red stripe), issued in 1991 (R. Exh. 9) and (R. Exh. 10) 1992. (1:114; 2:511–512, 523, 526, Cooper.)

The April 1990 book 2 contains the following reservation of rights prominently displayed on a separate page under the indexed heading, "The Future of These Plans" (G.C. Exh. 20 at 4, or printed p. 2) (emphasis added):

> The company expects and intends to continue these plans indefinitely. However, the company *reserves the right to amend or terminate* these plans at any time and for any reason. If any of these plans are amended or terminated, you and other active employees may not receive benefits as described [described] in other sections of this book. You may be entitled to receive different benefits, or benefits under different conditions. However, it is possible that you will lose all benefit coverage. This may happen at any time, even after you retire, if the company decides to terminate a plan or your coverage under a plan. In no event will you become entitled to any vested rights under these plans. Further, the provisions of this paragraph cannot be modified in any manner except by resolution of the company's Board of Directors.

Wages testified that, in his opinion, the AMP is part of the collective-bargaining agreement, except for items in the AMP that he has not agreed to. He concedes that he has not discussed 90 percent of the AMP with Amoco. (2:374–375.) The parties have never discussed, during negotiations, the reservation-of-rights language in either the AMP or the predecessor plan. As Wages testified that the Union has never agreed to the reservation of rights language (2:461), he presumably suggests that the reservation of rights language contained in Book 2 (G.C. Exh. 20) is not part of the AMP that the Union has agreed to.

C. Conclusion

The General Counsel contends that Amoco has made an unlawful midterm modification of the contract, and that, by unilaterally implementing the managed care program version of the AMP, effective October 1, 1993, Amoco has violated Section 8(a)(5) of the Act. As the General Counsel stipulated at trial (2:356–357, 596–597; 3:713), motive is not in issue because the Government is not alleging bad-faith bargaining.[4]

Among its many contentions, Amoco argues that the reservation-of-rights language is part of the collective-bargaining agreement. Although no language in the collective-bargaining agreement expressly "incorporates" the reservation-of-rights clause from the AMP, it is clear that the contract adopts the AMP. The Locals and the bargaining unit employees have enjoyed those provisions of the AMP which benefit them. The reservation-of-rights clause is unfavorable to them, but neither the OCAW nor the Locals involved here have ever specifically tried to delete it during contract negotiations. Consequently, the Union and the Locals involved here are bound by it. I so find. I –further find that, when Amoco implemented the modified AMP (or new AMP; the choice of terms is immaterial) on October 1, 1993, it acted pursuant to the contractually sanctioned reservation of rights provision, and therefore did not violate Section 8(a)(5) of the Act by making a unilateral midterm modification of the contract.

CONCLUSION OF LAW

The General Counsel has failed to show that Respondent Amoco violated Section 8(a)(5) of the Act when Amoco implemented, over the Union's objection, a modified Amoco Medical Plan (AMP) effective October 1, 1993.

[Recommended Order for dismissal omitted from publication.

[4] On brief, Amoco's attorney, after initially representing the correct stipulation (Br. at 42), unfortunately, several times thereafter, improperly asserts that the General Counsel stipulated that Amoco had bargained in good faith. (Br. at 49, 51 at fn. 22, 55 at fn. 30, 60, and 70.)